relationship there that has legal consequences, there was no unfairness in requiring the Petitioner to adjudicate claims arising from that relationship in Massachusetts. The Petitioner's reliance on Kulko v. Superior Court of California , 436 U.S. 84 (1978) is misplaced, as the Petitioner's contacts with Massachusetts far exceeded the tenuous contacts which the defendant in Kulko had with the state of California. The decision of the Massachusetts Appeals Court in the instant case is consistent with cases from other jurisdictions which have approved the exercise of personal jurisdiction over a non-resident defendant under similar factual circumstances.

Also, as more fully discussed below, this case does not present a federal question warranting the issuance of a writ of certiorari. The mere fact that courts in other states have found that a non-resident defendant who previously lived in that state as part of a married couple and then left the jurisdiction did not have sufficient "minimum contacts" with the state in certain matrimonial cases does not create a federal question. The issue of personal jurisdiction is wholly dependent on the facts of each case and must therefore be decided on a case-by-case basis. The cases relied upon by the Petitioner are factually distinguishable from those in the case at bar.

I THE MASSACHUSETTS APPEALS COURT CORRECTLY HELD THAT THE PROBATE AND FAMILY COURT IN MASSACHUSETTS HAD PERSONAL JURISDICTION OVER THE PETITIONER.

The Petitioner first asserts that this Court should review the decision of the Massachusetts Appeals Court because that Court erred in finding that Petitioner had sufficient "minimum contacts" with the Commonwealth of Massachusetts. For the reasons stated below, the Petitioner's argument must fail.

Good Hope Indus., Inc. v. Ryder Scott Co., 378 Mass. 1 (1979) articulates the standard a Massachusetts court must utilize in determining whether there is personal jurisdiction over a non-resident defendant. There is a two-prong inquiry: (1) the assertion of jurisdiction must be authorized under the state's long-arm statute, and (2) the exercise of jurisdiction under state law must be consistent with basic due process requirements mandated by the United States Constitution. Id. at 5-6. The determination of personal jurisdiction over a non-resident is "sensitive to the facts of each case." Id. at 2.

In a series of cases, this Court has articulated the standards for determining whether the exercise of jurisdiction over a non-resident defendant satisfies the basic due process requirements of the United States Constitution. Thus, in International Shoe Co. v. Washington, 326 U.S. 310 (1945), this Court wrote that "in order to subject a defendant to a judgment *in personam*, if he be not present within the territory or

the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Id. at 316 quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940). Accord Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) ("The constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum state"). If the defendant has performed some act "by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws," Hanson v. Denckla, 357 U.S. 235, 253 (1958), the forum state may, consistent with due process, exercise jurisdiction over a non-resident defendant. "Jurisdiction is proper. . .where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." Burger King Corp., supra at 475 quoting McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957). Even a single act can support the exercise of personal jurisdiction if it creates a "substantial connection" with the forum. McGee, supra at 223. See Asahi Metal Industry Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109 (1987). An exercise of jurisdiction is warranted if "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

In his Petition, the Petitioner does not challenge the Massachusetts Appeals Court's finding that jurisdiction was proper under the Massachusetts Long Arm Statute. Rather, the Petitioner focuses on the

second prong of the aforementioned jurisdictional inquiry – the so-called "minimum contacts" inquiry – in supporting his request for review by this Court. In particular, the Petitioner relies on this Court's decision in Kulko v. Superior Court, 436 U.S. 84 (1978) in support of his argument. The Petitioner's reliance on Kulko, however, is entirely misplaced, as the facts of Kulko are entirely distinguishable from those of the case at bar.

In Kulko, this Court held that the California Superior Court could not exercise personal jurisdiction over the former husband of the plaintiff in an action to, among other things, increase the defendant's child-support obligations to her. Id. at 86. The Kulko defendant's contacts with the State of California (unlike those of the Petitioner with the Commonwealth of Massachusetts) were tenuous at best. Specifically, the Kulko defendant had been in California on only two occasions, once for a three-day military stopover years prior to the commencement of the subject litigation and a year later for a 24-hour stopover on his return from military service. Id. at 92-93. Although the couple had married in California during one of these two brief visits, the parties in Kulko spent their entire married life in New York. Id. at 93. The basis upon which the California court premised its exercise of personal jurisdiction over the defendant was his "actively and fully [consenting] to [the parties' daughter] living in California for the school year...and...[sending] her to California for that purpose" and the "financial benefit [the defendant] derived from his daughter's presence in California for nine months of the year". Id. at 94. The Kulko Court rejected these sparse connections with the State of California, noting that the defendant's actions

were not of the type "that a reasonable parent would expect to result in the substantial financial burden and personal strain of litigating a child-support suit in a forum 3,000 miles away" and opining that "we therefore see no basis on which it can be said that [the husband] could reasonably have anticipated being 'haled before a [California] court.'" Id. at 97-98 quoting Shaffer v. Heitner, 433 U.S. 186, 216 n.12 (1977).

The facts of the present case differ drastically from the facts Kulko--a point which the Petitioner implicitly concedes in his Petition. Unlike the defendant in Kulko, the Petitioner lived in Massachusetts with the Respondent for a significant time period: some six years and a period of time which the Appeals Court concluded was the principal duration of the marriage. Akinci-Unal, supra at 216-218 (App. 5a-8a). Unlike the plaintiff in Kulko, the Respondent in the instant case did not relocate to a jurisdiction with which she had not previously had significant contacts and which did not relate directly to her domestic relations issues.[4] Rather, she returned to the jurisdiction where the "heft" of the marriage had taken place. Id., at 217 (App. 7a). Whereas in Kulko, the claims at issue arose from a relationship which had taken place entirely in another jurisdiction, the claims at issue in the instant litigation arose where the parties had lived the majority of their married life together, in Massachusetts. The Petitioner's decision to live in Massachusetts with the Respondent for the bulk of the marriage clearly distinguish him from the defendant in Kulko, who had

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[4]In Kulko, the parties spent their entire married life in New York, not California. They drew up their separation agreement in New York, where it was signed by the plaintiff. Id. at 87.

done nothing that he could reasonably "expect to result in the substantial financial burden and personal strain of litigating a child. . .support suit in a forum 3,000 miles away." Kulko, supra at 97-98 quoting Shaffer v. Heitner, 433 U.S. at 216. As the Massachusetts Appeals Court properly noted in the case at bar:

> Having voluntarily engaged in a relationship that has legal consequences, the [Petitioner] can scarcely be surprised by, nor reasonably view as unfair, this State's enforcement of the [Respondent's] rights (if any) that arise from that relationship. Certainly, he does not defeat the Commonwealth's power to act merely by leaving the jurisdiction; such circumstances are among the reasons that long-arm statutes exist.

Akinci-Unal, supra at 217 (App. 7a).

The Petitioner's argument that "minimum contacts" might exist had the Respondent remained in Massachusetts after he left or if the parties owned property in Massachusetts at the time the Respondent commenced her action ignores the prior history of the parties' relationship with each other and their significant contacts with the Commonwealth of Massachusetts. It is clear that the couple had no contacts with any other state or country of the same magnitude that they had with Massachusetts. Contrary to what he implies in his Petition, it was entirely unreasonable for the Petitioner to conclude that either Bahrain or Turkey – where he ultimately instituted and concluded divorce proceedings – had greater contacts with the parties in this case, and that

the parties' economic claims would therefore be adjudicated in either of these jurisdictions.

Nor is the Petitioner's argument that it was Respondent's "unilateral activity" which subjected the Petitioner to jurisdiction in Massachusetts at all persuasive. The Petitioner's argument ignores the meaningful history of contacts between both parties and Massachusetts during the "heft" of the marriage which occurred there. This is not a case, as in Kulko, where the actions of the plaintiff alone established the contact with the forum state. Rather, it is the actions of both parties, in choosing to spend the majority of their marriage in Massachusetts, which subjected the Petitioner to jurisdiction in Massachusetts. See Burger King Corp., supra at 475; McGee, supra, at 223 (assertion of jurisdiction proper where contacts with the forum state result from actions of the defendant himself creating substantial connection with the forum state). Compare H. Lewis Packaging, LLC v. Spectrum Plastics, Inc., 296 F. Supp. 2d 234, 239-240 (D. Conn. 2003)(exercise of personal jurisdiction over non-resident defendant was appropriate; in rejecting the "unilateral act" dicta contained in Kulko, court found that the continuing course of conduct between the parties, including telephone calls, commission payments, and affiliation with the forum through business cards, in the aggregate suffices to provide defendant with fair warning that acts or omissions may require it to defend a lawsuit in the forum state); Mesalic v. Fiberfloat Corp., 897 F.2d 696, 701 (3rd Cir. 1990)(upholding jurisdiction over non-resident defendant where defendant's actions in the forum state, including mail and telephone communications and substantial repairs undertaken by defendant itself

"create[d] a substantial connection with the forum state")

The Massachusetts Appeals Court's decision is entirely consistent with the decision of at least two other courts that have held that personal jurisdiction is appropriate over a non-resident where monetary claims arise out of a marital relationship which previously existed in the forum state. Thus, in Steel v. United States, 813 F.2d 1545, 1551-1552 (9th Cir. 1987), the Ninth Circuit rejected a defendant's argument that Kulko prevented the exercise of personal jurisdiction over him in California in a declaratory action to require the federal government to honor a California judgment dividing the defendant's retirement benefits between the parties. There the Court stated:

> The claim next must be one that arises out of or results from the defendant's forum-related activities. As noted in another conflict of judgments case, "there are few areas of the law in black and white. The greys are dominant and even among them the shades are innumerable." Estin v. Estin, 334 U.S. 541, 545, 92 L. Ed. 1561, 68 S. Ct. 1213 (1948). Unlike tort or contract cases, divorce and division of marital property will not always yield to a simple determination of what arises out of or results from forum-related activities. The shades here are fine indeed. Nevertheless, the problem regarding the division of the Steel's marital property is intimately bound up with Dean's contacts with California: his domicile there early in the marriage before moving with the Air Force, his return there from Italy, and his separation from

> his wife and children there. Dean contested the California court's jurisdiction over him in Helen's divorce action and lost. He did not appeal that determination. For the purposes of personal jurisdiction in a dispute over marital property, Dean's contacts are sufficiently related to the resulting conflict of judgments to support jurisdiction.

Id. at 1551.

Similarly, in Levy v. Levy, 185 A.D.2d 15 (N.Y. 1993), the Appellate Division of the Supreme Court of New York considered whether jurisdiction over a Washington resident was proper in a matrimonial case filed in New York by the plaintiff (a New York resident). In Levy, the parties were married in New York in 1970, had their first child there in 1973 and moved to Massachusetts in 1974 and then to Texas in 1976. Id. at 16. The couple later reestablished their marital domicile in New York in 1979, but relocated to California within a few years thereafter. Id. When the marriage disintegrated (in California), the plaintiff moved back to New York in 1982, and the defendant returned to New York in 1987 for a year before moving to New Jersey and later to Washington in 1989. Id. at 16-17.

The primary focus of the Court's inquiry in Levy was whether the lapse of time since the parties resided in New York precluded the exercise of jurisdiction under New York's long-arm statute.[5] However, the

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[5] In the instant case, the Massachusetts Appeals Court addressed a similar issue with regard to the Massachusetts Long Arm Statute.

Court went on to find that there were sufficient contacts between the defendant and New York to satisfy constitutional due process concerns, noting that "[d]efendant's contacts with New York were greater than the more attenuated contacts found in Kulko v. California Superior Court (436 U.S. 84)..." Levy, supra, at 18.

Both Steel and Levy stand for the proposition that a couple's prior residence in a forum state may create sufficient minimum contacts to warrant the exercise of personal jurisdiction over a non-resident defendant, even where that contact (by way of a martial relationship in the state) no longer exists and is arguably somewhat dated. They support the finding of Massachusetts Appeals Court in the present case and the Petitioner's argument that he lacked "minimum contacts" with Massachusetts should be rejected by this Court.

II. THERE IS NO FEDERAL QUESTION AT ISSUE IN THIS MATTER.

The Petitioner seeks to obtain the issuance of a writ of certiorari in this matter by simply alleging that states are in conflict over the application of the minimum contacts test under the due process clause.

The Court noted that a prior version of the statute had required that the marital domicile be in Massachusetts for at least one year within the two years immediately preceding commencement of the action. Akinci-Unal, supra, at 218 n.7 (App. 7a-8a). Noting that the statute had been amended to eliminate this time requirement, the Court concluded (as did the Court in Levy) that the marital residence in the forum state need not be recent. Id. at 217-218 (App. 7a).

The Petitioner's argument is wrong as a matter of law and should therefore be rejected by this Court.

As this Court has opined in Kulko:

> Like any standard that requires a determination of "reasonableness", the "minimum contacts" test of International Shoe is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. Hanson v. Denckla, 357 U.S. 235, 246 (1958). We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable." Estin v. Estin, 334 U.S. 541, 545 (1948).

Id. at 92. Thus, as the Massachusetts Appeals Court correctly noted, "[w]hether jurisdiction may be permissibly asserted under the long-arm statute is dependent on the particular facts of the case." Akinci-Unal, supra at 216 (App. 5a).

That other courts in other jurisdictions have reached a different conclusion regarding the propriety of asserting jurisdiction over a non-resident defendant than did the Massachusetts Appeals Court in the case at bar does not create a significant federal question warranting the issuance of a writ of certiorari. Rather, it simply illustrates that the facts of each particular case are unique, and that the court reviewing the issue of personal jurisdiction is free to weigh the particular facts in the case before it in determining whether the exercise of jurisdiction is appropriate under those

circumstances. Thus, the results of each of the three "conflicting" cases cited by the Petitioner are easily reconciled with the decision by the Massachusetts Appeals Court, because the facts of each of those cases differed from the facts in the instant case.[6]

Specifically, in Garrett v. Garrett, 668 So.2d 991 (Fla. 1996), the primary focus of the Court's decision was not the issue of whether "minimum contacts" existed, but rather whether the defendant-husband's prior residence in Florida subjected him to the so-called "prior residence" section of Florida's long arm statute. Id. at 992. The Court found that it did not. Nowhere in the Garrett Court's opinion does it state that exercise of jurisdiction based upon a prior residence in the forum state by a married couple some years earlier would violate the due process clause. Rather, the Court suggested only that empowering the Florida courts to exercise jurisdiction over a non-resident if the couple "ever lived in this state, for however brief a time" would violate the due process clause. Id. at 994. This is not the situation presented in the instance case, where the "heft" of the marriage took place in Massachusetts.[7]

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[6] The fourth so-called "conflicting" case cited by the Petitioner, Levy v. Levy, 185 A.D. 3d 15 (N.Y. 1993), which reaches the same result on the issue of personal jurisdiction as that reached by the Massachusetts Appeals Court in the instant case, is discussed supra at pages 17-18.

[7] Further, in Garrett, the couple had established a more significant relationship to the state of their subsequent marital domicile (Texas) than the parties in the instant case ever established in Bahrain or Turkey, where the Petitioner requested and obtained judgments of divorce.

Likewise, in Katz v. Katz, 707 A.2d 1353 (N.J. Super. 1998), the couple's joint residence in New Jersey (the forum state) existed some sixteen years prior to the commencement of the action in which the plaintiff sought to establish long-arm jurisdiction over the defendant. Id. at 1354-1355. Unlike the present case, the couple had jointly participated in divorce proceedings in Pennsylvania (the state to which they relocated after they lived in New Jersey) and executed a property settlement agreement there. Given the large lapse of time which had occurred since the defendant lived in new Jersey and the couple's decision to litigate their divorce elsewhere, the Katz court's decision that there was no personal jurisdiction over the defendant was warranted on the facts.

The case of Klette v. Klette, 167 A.D.2d 197 (N.Y. 1990) is similarly justified on its facts. As with the Garrett case discussed supra at 20-21, the primary thrust of the decision was that jurisdiction did not attach under New York's long arm statute, which the Court construed to require recent marital domicile in the state to confer jurisdiction (contrary to what the Massachusetts Appeals Court determined as to the Massachusetts long arm statute). However, even with respect to that part of the opinion which addressed the due process issue, the facts are distinguishable from both the instant case and the Levy case. As with Katz discussed supra at 21, the amount of time that had elapsed since the defendant lived in New York at the time the proceedings commenced and service was effected was far greater than the time that elapsed between when the Petitioner left Massachusetts and when the Respondent initiated the action that is at issue in the present case. Further, unlike the present

case, the principal duration of the marriage occurred in a jurisdiction other than the forum state. Similarly, as in Katz, the parties had agreed to litigate their divorce in the state to which the couple moved after they lived in New York (Connecticut) and they entered into a written separation agreement there. These facts are significantly different from the facts presented in the case at bar and the Klette court was warranted in reaching a different result on the issue of personal jurisdiction than did the Massachusetts Appeals Court.

Moreover, the Petitioner's reliance on the Uniform Interstate Family Support Act ("UIFSA") in support of his argument appears to be contradicted by at least one case. In Malwitz v. Parr, 99 P.3d 56 (Colo. 2004), the Supreme Court of Colorado (relying on its version of UIFSA) found that the exercise of jurisdiction was appropriate in a case where defendant's contacts with the State of Colorado were limited to abusing and harassing the plaintiff in Texas to a point where she and the parties' child were forced to relocate to Colorado from Texas. The Malwitz Court wrote:

> In assessing a defendant's contacts, we consider whether the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen, 444 U.S. at 297. In some circumstances, even a single act may subject a defendant to jurisdiction, where that act creates a substantial connection between the defendant and the forum state.

Id. at 61. Certainly the Petitioner's contacts with Massachusetts were far more extensive than the contacts of the defendant in Malwitz. Yet, in the particular facts of that case, jurisdiction was nevertheless appropriately conferred, given the enormous consequences in the forum state which the defendant's actions created. Malwitz is yet another example of the case-by-case analysis required when evaluating the due process component of a claim for personal jurisdiction over a non-resident defendant. That the results may vary from case to case is wholly consistent with federal law and does not create a federal question warranting the issuance of a writ of certiorari.

CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Petition for a Writ of Certiorari filed by Petitioner be denied.

Respectfully submitted,
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